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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 769

TOM E. RODGERS,
Petitioner,

vs.

BALTIMORE & OHIO RAILROAD CO.,
Respondent.

PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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Respondent's brief in opposition to petitioner's prayer to this Court for remedial benefits is predicated on the erroneous proposition of law that the Longshoreman and Harbor Worker's Compensation Act constitutes a basis for curtailing the benefits granted by Congress to all railroad employees under FELA. 45 U. S. C. sec. 51 *et seq.*

Petitioner was a railroad employee, irrespective of the work he was doing at the moment, and is therefore entitled to the protection of said FELA. The Compensation Act was never intended to limit the benefits granted by Congress to railroad employees under FELA.

If the work in which petitioner was engaged constitutes work in aid of navigation, then petitioner was doing work traditionally performed by a seaman. He was the sole personnel constituting the crew of the vessel. As such, he would be entitled to the benefits accorded to seamen. He would then come clearly within the provisions of the Jones Act (46 U. S. C. A. 688), as well as under the benefits enunciated in the case of *Seas Shipping v. Sieracki*, 328 U. S. 85, 66 S. Ct. 872.

In any event, the law cries for clarification lest other railroad employees or seamen have their rights curtailed on the untenable defense that the aforesaid Compensation Act constitutes a basis for eliminating benefits granted by FELA, *supra*.

The question is of great moment and importance to all persons engaged as employers or employees in commerce by rail or by ship.

Respectfully submitted,

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DONALD D. OLMAN,
On the Brief.